

**SENATE, No. 2292**

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**STATE OF NEW JERSEY**

**213th LEGISLATURE**

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INTRODUCED OCTOBER 20, 2008

**Sponsored by:**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Senator PHILIP E. HAINES**

**District 8 (Burlington)**

**Co-Sponsored by:**

**Senators Oroho, Pennacchio, O'Toole, Singer, Bucco, Cardinale, Kyrillos,  
Beck, Ciesla, S.Kean, T.Kean, Baroni and Lance**

**SYNOPSIS**

Revises laws governing provision of affordable housing; reestablishes regional contribution agreement as method of meeting affordable housing obligation; repeals Statewide non-residential development fee.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning affordable housing, revising various parts of  
2 the statutory law and supplementing P.L.1975, c.291 (C.40:55D-  
3 1 et seq.) and P.L.1985, c.222 (C.52:27D-301 et al.).  
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*  
7

8 1. Section 1 of P.L.2004, c.140 (C.52:27D-287.1) is amended  
9 to read as follows:

10 1. The Commissioner of Community Affairs shall establish a  
11 rental assistance program for low income individuals or households.  
12 This program shall be in addition to and supplement any existing  
13 programs established pursuant to the "Prevention of Homelessness  
14 Act (1984)," P.L.1984, c.180 (C.52:27D-280 et al.).

15 a. The program shall provide rental assistance grants  
16 comparable to the federal section 8 program, but shall be available  
17 only to State residents who are not currently holders of federal  
18 section 8 vouchers.

19 b. Assistance to an individual or household under the State  
20 program shall be terminated upon the award of federal section 8  
21 rental assistance to the same individual or household.

22 c. The program shall reserve a portion of the grants for  
23 assistance to senior citizens aged 62 or older who otherwise meet  
24 the criteria of subsection a. of this section.

25 d. The program shall reserve a portion of the grants for  
26 assistance to veterans who have successfully completed the  
27 Veterans Transitional Housing Program, or "Veterans Haven," a  
28 vocational and transitional housing program for homeless veterans  
29 administered by the New Jersey Department of Military and  
30 Veterans' Affairs.

31 e. Municipalities shall be permitted under the program to  
32 sponsor rental vouchers, subject to the approval of the Council on  
33 Affordable Housing, and in accordance with the regulations  
34 promulgated by the council to effectuate the "Fair Housing Act,"  
35 P.L.1985, c.222 (C52:27D-301 et al.).

36 (cf: P.L.2007, c.237, s.1)  
37

38 2. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to  
39 read as follows:

40 2. The Legislature finds that:

41 a. The New Jersey Supreme Court, through its rulings in South  
42 Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975)  
43 and South Burlington County NAACP v. Mount Laurel, 92 N.J. 158  
44 (1983), has determined that every municipality in a growth area has  
45 a constitutional obligation to provide through its land use

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 regulations a realistic opportunity for a fair share of its region's  
2 present and prospective needs for housing for low and moderate  
3 income families.

4 b. In the second Mount Laurel ruling, the Supreme Court stated  
5 that the determination of the methods for satisfying this  
6 constitutional obligation "is better left to the Legislature," that the  
7 court has "always preferred legislative to judicial action in their  
8 field," and that the judicial role in upholding the Mount Laurel  
9 doctrine "could decrease as a result of legislative and executive  
10 action."

11 c. The interest of all citizens, including low and moderate  
12 income families in need of affordable housing, and the needs of the  
13 workforce, would be best served by a comprehensive planning and  
14 implementation response to this constitutional obligation.

15 d. There are a number of essential ingredients to a  
16 comprehensive planning and implementation response, including  
17 the establishment of reasonable fair share housing guidelines and  
18 standards, the initial determination of fair share by officials at the  
19 municipal level and the preparation of a municipal housing element,  
20 State review of the local fair share study and housing element, and  
21 continuous State funding for low and moderate income housing to  
22 replace the federal housing subsidy programs which have been  
23 almost completely eliminated.

24 e. The State can maximize the number of low and moderate  
25 income units provided in New Jersey by allowing its municipalities  
26 to adopt appropriate phasing schedules for meeting their fair share,  
27 so long as the municipalities permit a timely achievement of an  
28 appropriate fair share of the regional need for low and moderate  
29 income housing as required by the Mt. Laurel I and II opinions and  
30 other relevant court decisions.

31 f. The State can also maximize the number of low and  
32 moderate income units by creating new affordable housing and by  
33 rehabilitating existing, but substandard, housing in the State.  
34 **【Because the Legislature has determined, pursuant to P.L.2008,**  
35 **c.46 (C.52:27D-329.1 et al.), that it is no longer appropriate or in**  
36 **harmony with the Mount Laurel doctrine to permit the transfer of**  
37 **the fair share obligations among municipalities within a housing**  
38 **region, it】 It is necessary and appropriate to create a **【new】****  
39 **program to create new affordable housing and to foster the**  
40 **rehabilitation of existing, but substandard, housing.**

41 g. Since the urban areas are vitally important to the State,  
42 construction, conversion and rehabilitation of housing in our urban  
43 centers should be encouraged. However, the provision of housing  
44 in urban areas must be balanced with the need to provide housing  
45 throughout the State for the free mobility of citizens.

46 h. The Supreme Court of New Jersey in its Mount Laurel  
47 decisions demands that municipal land use regulations affirmatively  
48 afford a reasonable opportunity for a variety and choice of housing

1 including low and moderate cost housing, to meet the needs of  
2 people desiring to live there. While provision for the actual  
3 construction of that housing by municipalities is not required, they  
4 are encouraged but not mandated to expend their own resources to  
5 help provide low and moderate income housing.

6 i. Certain amendments to the enabling act of the Council on  
7 Affordable Housing are necessary to provide guidance to the  
8 council to ensure consistency with the legislative intent, while at the  
9 same time clarifying the limitations of the council in its rulemaking.  
10 Although the court has remarked in several decisions that the  
11 Legislature has granted the council considerable deference in its  
12 rulemaking, the Legislature retains its power and obligation to  
13 clarify and amend the enabling act from which the council derives  
14 its rulemaking power, from time to time, in order to better guide the  
15 council.

16 j. **【The Legislature finds that the use of regional contribution**  
17 **agreements, which permits municipalities to transfer a certain**  
18 **portion of their fair share housing obligation outside of the**  
19 **municipal borders, should no longer be utilized as a mechanism for**  
20 **the creation of affordable housing by the council.】** (Deleted by  
21 amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_) (pending before the Legislature as this  
22 bill)

23 k. The Legislature finds and declares that New Jersey is  
24 significantly affected by the current economic downturn. The  
25 current state of the economy has led to an increase in home  
26 mortgage foreclosures in this State. Increased foreclosures have led  
27 to a supply of units for sale that are vacant or likely to soon become  
28 vacant.

29 (cf: P.L.2008, c.46, s.4)

30  
31 3. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to  
32 read as follows:

33 4. As used in this act:

34 a. "Council" means the Council on Affordable Housing  
35 established in this act, which shall have primary jurisdiction for the  
36 administration of housing obligations in accordance with sound  
37 regional planning considerations in this State.

38 b. "Housing region" means a geographic area of not less than  
39 two nor more than four contiguous, whole counties which exhibit  
40 significant social, economic and income similarities, and which  
41 constitute to the greatest extent practicable the primary metropolitan  
42 statistical areas as last defined by the United States Census Bureau  
43 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.).

44 c. "Low income housing" means housing affordable according  
45 to federal Department of Housing and Urban Development or other  
46 recognized standards for home ownership and rental costs and  
47 occupied or reserved for occupancy by households with a gross  
48 household income equal to 50% or less of the median gross

1 household income for households of the same size within the  
2 housing region in which the housing is located.

3 d. "Moderate income housing" means housing affordable  
4 according to federal Department of Housing and Urban  
5 Development or other recognized standards for home ownership  
6 and rental costs and occupied or reserved for occupancy by  
7 households with a gross household income equal to more than 50%  
8 but less than 80% of the median gross household income for  
9 households of the same size within the housing region in which the  
10 housing is located.

11 e. "Resolution of participation" means a resolution adopted by  
12 a municipality in which the municipality chooses to prepare a fair  
13 share plan and housing element in accordance with this act.

14 f. "Inclusionary development" means a residential housing  
15 development in which a substantial percentage of the housing units  
16 are provided for a reasonable income range of low and moderate  
17 income households.

18 g. "Conversion" means the conversion of existing commercial,  
19 industrial, or residential structures for low and moderate income  
20 housing purposes where a substantial percentage of the housing  
21 units are provided for a reasonable income range of low and  
22 moderate income households.

23 h. "Development" means any development for which  
24 permission may be required pursuant to the "Municipal Land Use  
25 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

26 i. "Agency" means the New Jersey Housing and Mortgage  
27 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et  
28 seq.).

29 j. "Prospective need" means a projection of housing needs  
30 based on development and growth which is reasonably likely to  
31 occur in a region or a municipality, as the case may be, as a result  
32 of actual determination of public and private entities. In  
33 determining prospective need, consideration shall be given to  
34 approvals of development applications, real property transfers and  
35 economic projections prepared by the State Planning Commission  
36 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-  
37 196 et seq.).

38 k. "Disabled person" means a person with a physical disability,  
39 infirmity, malformation or disfigurement which is caused by bodily  
40 injury, birth defect, aging or illness including epilepsy and other  
41 seizure disorders, and which shall include, but not be limited to, any  
42 degree of paralysis, amputation, lack of physical coordination,  
43 blindness or visual impediment, deafness or hearing impediment,  
44 muteness or speech impediment or physical reliance on a service or  
45 guide dog, wheelchair, or other remedial appliance or device.

46 l. "Adaptable" means constructed in compliance with the  
47 technical design standards of the barrier free subcode adopted by  
48 the Commissioner of Community Affairs pursuant to the "State

1 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119  
2 et seq.) and in accordance with the provisions of section 5 of  
3 P.L.2005, c.350 (C.52:27D-123.15).

4 m. "Very low income housing" means housing affordable  
5 according to federal Department of Housing and Urban  
6 Development or other recognized standards for home ownership  
7 and rental costs and occupied or reserved for occupancy by  
8 households with a gross household income equal to 30% or less of  
9 the median gross household income for households of the same size  
10 within the housing region in which the housing is located.

11 n. "Growth" means, for the purposes of P.L.1985, c.222  
12 (C.52:27D-301 et al.), including, but not limited to, the calculations  
13 of affordable housing need, the number of units of actual new  
14 residential construction not reserved for occupancy by low and  
15 moderate income households located on previously vacant land  
16 within a municipality.

17 o. "Market to affordable program" means a program to pay  
18 down the cost of market-rate units, including units in foreclosure,  
19 and offer them in sound condition, for sale or rent, at affordable  
20 prices to low- and moderate-income households to address all or a  
21 portion of the fair share obligation.

22 p. "New residential construction" means newly-constructed  
23 units on previously vacant land but shall not mean any construction  
24 or reconstruction of a single- or two-family house occupied as a  
25 primary residence.

26 q. "Substandard dwelling" means a dwelling of any age that  
27 requires the repair, completion, or replacement of plumbing, kitchen  
28 or heating facilities.

29 (cf: P.L.2008, c.46, s.5)

30  
31 4. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to  
32 read as follows:

33 7. It shall be the duty of the council, seven months after the  
34 confirmation of the last member initially appointed to the council,  
35 or January 1, 1986, whichever is earlier, and from time to time  
36 thereafter, to:

37 a. Determine housing regions of the State;

38 b. Estimate the present and prospective need for low and  
39 moderate income housing at the State and regional levels.

40 (1) Notwithstanding any regulation of the council to the  
41 contrary, the council shall base the prospective need portion of the  
42 fair share obligation solely on the amount of growth that has  
43 occurred, or is projected to occur, in accordance with the definition  
44 of growth in section 4 of P.L.1985, c.222 (C.52:27D-304). Nothing  
45 in this subparagraph shall apply to the amount of units which may  
46 be required to be set-aside for low and moderate income households  
47 when market-rate housing development occurs;

1       (2) In estimating the present and prospective need under his  
2 section, the council shall filter out those units of housing actually  
3 supplied through federal programs, including project or tenant-  
4 based section 8 programs, public housing subject to federal Housing  
5 and Urban Development (HUD) regulations, or housing financed  
6 through federal low income tax credits, and any housing financed  
7 through any State resources, including, but not limited to, moneys  
8 loaned or granted through the Department of Community Affairs.

9       c. Adopt criteria and guidelines for:

10       (1) Municipal determination of its present and prospective fair  
11 share of the housing need in a given region which shall be  
12 computed for a 10-year period, other than the housing round period  
13 ending in the year 2018, and which determination shall be in  
14 accordance with the definition of growth as set forth in section 4 of  
15 P.L.1985, c.222 (C.52:27D-304).

16       Municipal fair share shall be determined after crediting on a one-  
17 to-one basis each current unit of low and moderate income housing  
18 of adequate standard, including any such housing constructed or  
19 acquired as part of a housing program specifically intended to  
20 provide housing for low and moderate income households.  
21 Notwithstanding any other law to the contrary, a municipality shall  
22 be entitled to a credit for a unit if it demonstrates that (a) the  
23 municipality issued a certificate of occupancy for the unit, which  
24 was either newly constructed or rehabilitated between April 1, 1980  
25 and December 15, 1986; (b) a construction code official certifies,  
26 based upon a visual exterior survey, that the unit is in compliance  
27 with pertinent construction code standards with respect to structural  
28 elements, roofing, siding, doors and windows; (c) the household  
29 occupying the unit certifies in writing, under penalty of perjury, that  
30 it receives no greater income than that established pursuant to  
31 section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for  
32 moderate income housing; and (d) the unit for which credit is  
33 sought is affordable to low and moderate income households under  
34 the standards established by the council at the time of filing of the  
35 petition for substantive certification. It shall be sufficient if the  
36 certification required in subparagraph (c) is signed by one member  
37 of the household. A certification submitted pursuant to this  
38 paragraph shall be reviewable only by the council or its staff and  
39 shall not be a public record;

40       Nothing in P.L.1995, c.81 shall affect the validity of substantive  
41 certification granted by the council prior to November 21, 1994, or  
42 of a judgment of compliance entered by any court of competent  
43 jurisdiction prior to that date. Additionally, any municipality that  
44 received substantive certification or a judgment of compliance prior  
45 to November 21, 1994 and filed a motion prior to November 21,  
46 1994 to amend substantive certification or a judgment of  
47 compliance for the purpose of obtaining credits, shall be entitled to  
48 a determination of its right to credits pursuant to the standards

1 established by the Legislature prior to P.L.1995, c.81. Any  
2 municipality that filed a motion prior to November 21, 1994 for the  
3 purpose of obtaining credits, which motion was supported by the  
4 results of a completed survey performed pursuant to council rules,  
5 shall be entitled to a determination of its right to credits pursuant to  
6 the standards established by the Legislature prior to P.L.1995, c.81;

7 (2) Municipal adjustment of the present and prospective fair  
8 share based upon available vacant and developable land,  
9 infrastructure considerations or environmental or historic  
10 preservation factors and adjustments shall be made whenever:

11 (a) The preservation of historically or important architecture and  
12 sites and their environs or environmentally sensitive lands may be  
13 jeopardized,

14 (b) The established pattern of development in the community  
15 would be drastically altered,

16 (c) Adequate land for recreational, conservation or agricultural  
17 and farmland preservation purposes would not be provided,

18 (d) Adequate open space would not be provided,

19 (e) The pattern of development is contrary to the planning  
20 designations in the State Development and Redevelopment Plan  
21 prepared pursuant to sections 1 through 12 of P.L.1985, c.398  
22 (C.52:18A-196 et seq.),

23 (f) Vacant and developable land is not available in the  
24 municipality, and

25 (g) Adequate public facilities and infrastructure capacities are  
26 not available, or would result in costs prohibitive to the public if  
27 provided.

28 (3) (Deleted by amendment, P.L.1993, c.31).

29 d. Provide population and household projections for the State  
30 and housing regions;

31 e. In its discretion, place a limit, based on a percentage of  
32 existing housing stock in a municipality and any other criteria  
33 including employment opportunities which the council deems  
34 appropriate, upon the aggregate number of units which may be  
35 allocated to a municipality as its fair share of the region's present  
36 and prospective need for low and moderate income housing. No  
37 municipality shall be required to address a fair share of housing  
38 units affordable to households with a gross household income of  
39 less than 80% of the median gross household income beyond 1,000  
40 units within ten years from the grant of substantive certification,  
41 unless it is demonstrated, following objection by an interested party  
42 and an evidentiary hearing, based upon the facts and circumstances  
43 of the affected municipality that it is likely that the municipality  
44 through its zoning powers could create a realistic opportunity for  
45 more than 1,000 low and moderate income units within that ten-  
46 year period. For the purposes of this section, the facts and  
47 circumstances which shall determine whether a municipality's fair  
48 share shall exceed 1,000 units, as provided above, shall be a finding



1 that the municipality has issued more than 5,000 certificates of  
2 occupancy for residential units in the ten-year period preceding the  
3 petition for substantive certification in connection with which the  
4 objection was filed.

5 For the purpose of crediting low and moderate income housing  
6 units in order to arrive at a determination of present and prospective  
7 fair share, as set forth in paragraph (1) of subsection c. of this  
8 section, housing units comprised in a community residence for the  
9 developmentally disabled, as defined in section 2 of P.L.1977,  
10 c.448 (C.30:11B-2), shall be fully credited pursuant to rules  
11 promulgated or to be promulgated by the council, to the extent that  
12 the units are affordable to persons of low and moderate income and  
13 are available to the general public.

14 For the purpose of crediting against the fair share obligation, a  
15 municipality shall be permitted to satisfy no less than one unit of  
16 fair share obligation for each rental assistance voucher sponsored  
17 for a period of not less than five years, in accordance with the  
18 provisions of P.L.2004, c.140 (C.52:27D-287.1 et al.), subparagraph  
19 (10) of subsection a. of section 11 of P.L.1985, c.222 (C.52:27D-  
20 311) and the regulations of the council.

21 The council, with respect to any municipality seeking substantive  
22 certification, shall require that a minimum percentage of housing  
23 units in any residential development resulting from a zoning change  
24 made to a previously non-residentially-zoned property, where the  
25 change in zoning precedes or follows the application for residential  
26 development by no more than 24 months, be reserved for occupancy  
27 by low or moderate income households, which percentage shall be  
28 determined by the council based on economic feasibility with  
29 consideration for the proposed density of development.

30 In carrying out the above duties, including, but not limited to,  
31 present and prospective need estimations the council shall give  
32 appropriate weight to pertinent research studies, government  
33 reports, decisions of other branches of government, implementation  
34 of the State Development and Redevelopment Plan prepared  
35 pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196  
36 et seq.) and public comment. To assist the council, the State  
37 Planning Commission established under that act shall provide the  
38 council annually with economic growth, development and decline  
39 projections for each housing region for the next ten years. The  
40 council shall develop procedures for periodically adjusting regional  
41 need based upon the low and moderate income housing that is  
42 provided in the region through any federal, State, municipal or  
43 private housing program.

44 No housing unit subject to the provisions of section 5 of  
45 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the  
46 barrier free subcode adopted by the Commissioner of Community  
47 Affairs pursuant to the "State Uniform Construction Code Act,"  
48 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for

1 inclusion in the municipal fair share plan certified by the council  
2 unless the unit complies with the requirements set forth thereunder.

3 Notwithstanding anything in this section to the contrary, a  
4 municipality may perform an exterior housing survey to determine  
5 the actual number of substandard units occupied by low- and  
6 moderate-income households. A municipality's rehabilitation  
7 obligation shall be presumed to be the number of housing units that  
8 are both substandard and occupied by households of low and  
9 moderate income as of the date of filing of a municipality's petition  
10 for substantive certification.

11 The council may rebut the presumption that the municipal  
12 exterior housing survey count is the rehabilitation share of a  
13 municipality's fair share affordable housing obligation by  
14 presenting credible evidence to the contrary. To rebut the  
15 presumption, the council may appeal to the Office of Administrative  
16 Law, in accordance with the regulations of the office.

17 (cf: 2008, c.46, s.6)

18  
19 5. Section 9 of P.L.1985, c. 222 (C.52:27D-309) is amended to  
20 read as follows:

21 9. a. Within four months after the effective date of this act,  
22 each municipality which so elects shall, by a duly adopted  
23 resolution of participation, notify the council of its intent to submit  
24 to the council its fair share housing plan. Within five months after  
25 the council's adoption of its criteria and guidelines, the municipality  
26 shall prepare and file with the council a housing element, based on  
27 the council's criteria and guidelines, and any fair share housing  
28 ordinance introduced and given first reading and second reading in  
29 a hearing pursuant to R.S. 40:49-2 which implements the housing  
30 element.

31 b. **[A]** Notwithstanding any rules of the council to the  
32 contrary, a municipality [which does not notify the council of its  
33 participation within four months may do so at any time thereafter]  
34 may notify the council of its intent to participate at any time. For  
35 the housing period covering 2004 to 2018, a municipality desiring  
36 to participate shall file a petition, accompanied by its housing  
37 element and fair share plan, and any other information required by  
38 the council, by December 1, 2009, or within 365 days of the  
39 effective date of P.L. , (C. ) (pending before the Legislature  
40 as this bill), whichever is later. In any exclusionary zoning  
41 litigation instituted against such a municipality, however, there  
42 shall be no exhaustion of administrative remedy requirements  
43 pursuant to section 16 of this act unless the municipality also files  
44 its fair share plan and housing element with the council prior to the  
45 institution of the litigation.

46 (cf: P.L.1985, c. 222, s. 9)

1       6. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended  
2 to read as follows:

3       1. When computing a municipal adjustment regarding available  
4 land resources as part of the determination of a municipality's fair  
5 share of affordable housing, including prior round unmet need or  
6 prospective need calculations, the Council on Affordable Housing  
7 shall exclude from designating as vacant land:

8       (a) any land that is owned by a local government entity that as  
9 of January 1, 1997, has adopted, prior to the institution of a lawsuit  
10 seeking a builder's remedy or prior to the filing of a petition for  
11 substantive certification of a housing element and fair share plan, a  
12 resolution authorizing an execution of agreement that the land be  
13 utilized for a public purpose other than housing;

14       (b) any land listed on a master plan of a municipality as being  
15 dedicated, by easement or otherwise, for purposes of conservation,  
16 park lands or open space and which is owned, leased, licensed, or in  
17 any manner operated by a county, municipality or tax-exempt,  
18 nonprofit organization including a local board of education, or by  
19 more than one municipality by joint agreement pursuant to  
20 P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity  
21 maintains such ownership, lease, license, or operational control of  
22 such land;

23       (c) any vacant contiguous parcels of land in private ownership  
24 of a size which would accommodate fewer than five housing units if  
25 current standards of the council were applied pertaining to housing  
26 density;

27       (d) historic and architecturally important sites listed on the State  
28 Register of Historic Places or National Register of Historic Places  
29 prior to the submission of the petition of substantive certification;

30       (e) agricultural lands when the development rights to these  
31 lands have been purchased or restricted by covenant;

32       (f) sites designated for active recreation that are designated for  
33 recreational purposes in the municipal master plan; and

34       (g) environmentally sensitive lands where development is  
35 [prohibited] restricted by any State or federal agency regulations.

36       No municipality shall be required to utilize for affordable  
37 housing purposes land that is excluded from being designated as  
38 vacant land, and the prospective fair share obligation shall be  
39 proportionally reduced by an amount correlating to amount of land  
40 being excluded from being designated as vacant land.

41 (cf: P.L.2008, c.46, s.39)  
42

43       7. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to  
44 read as follows:

45       11. a. In adopting its housing element, the municipality may  
46 provide for its fair share of low and moderate income housing by  
47 means of any technique or combination of techniques which provide  
48 a realistic opportunity for the provision of the fair share. The

1 housing element shall contain an analysis demonstrating that it will  
2 provide such a realistic opportunity, and the municipality shall  
3 establish that its land use and other relevant ordinances have been  
4 revised to incorporate the provisions for low and moderate income  
5 housing. In adopting its housing element and fair share plan, a  
6 exterior housing survey performed by a municipality shall be  
7 presumed to be correct, as provided in subsection e. of section 7 of  
8 P.L.1985, c.222 (C.52:27D-307). A municipality's determination of  
9 municipal present and prospective need, if determined in  
10 accordance with the methods and definitions set forth in P.L.1985,  
11 c.222 (C.52:27D-301 et al.) shall be presumed to be correct.

12 In preparing the housing element, the municipality shall consider  
13 the following techniques for providing low and moderate income  
14 housing within the municipality, as well as such other techniques as  
15 may be published by the council or proposed by the municipality:

16 (1) Rezoning for densities necessary to assure the economic  
17 viability of any inclusionary developments, either through  
18 mandatory set-asides or density bonuses, as may be necessary to  
19 meet all or part of the municipality's fair share in accordance with  
20 the regulations of the council and the provision of subsection h. of  
21 this section;

22 (2) Determination of the total residential zoning necessary to  
23 assure that the municipality's fair share is achieved;

24 (3) Determination of measures that the municipality will take to  
25 assure that low and moderate income units remain affordable to low  
26 and moderate income households for an appropriate period of not  
27 less than **[six]** 10 years;

28 (4) A plan for infrastructure expansion and rehabilitation if  
29 necessary to assure the achievement of the municipality's fair share  
30 of low and moderate income housing;

31 (5) Donation or use of municipally owned land or land  
32 condemned by the municipality for purposes of providing low and  
33 moderate income housing;

34 (6) Tax abatements for purposes of providing low and moderate  
35 income housing;

36 (7) Utilization of funds obtained from any State or federal  
37 subsidy toward the construction of low and moderate income  
38 housing;

39 (8) Utilization of municipally generated funds toward the  
40 construction of low and moderate income housing; **[and]**

41 (9) The purchase of privately owned real property used for  
42 residential purposes at the value of all liens secured by the property;  
43 excluding any tax liens, notwithstanding that the total amount of  
44 debt secured by liens exceeds the appraised value of the property,  
45 pursuant to regulations promulgated by the Commissioner of  
46 Community Affairs pursuant to subsection b. of section 41 of  
47 P.L.2000, c.126 (C.52:27D-311.2); and

1     (10)The sponsorship of rental assistance vouchers as permitted  
2 under rules to be adopted by the council in accordance with  
3 P.L. , c. , (C. ) (pending before the Legislature as this bill),  
4 through municipally-generated funds, including development fees  
5 authorized by the council to be collected, funds obtained from any  
6 State or federal government subsidy, the purchase or rental of  
7 privately-owned real property, or through any other municipally-  
8 sponsored subsidy.

9     b. The municipality may provide for a phasing schedule for the  
10 achievement of its fair share of low and moderate income housing.

11     c. (Deleted by amendment, P.L.2008, c.46)

12     d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall  
13 require a municipality to raise or expend municipal revenues in  
14 order to provide low and moderate income housing. This  
15 subsection shall be construed as requiring a municipality to expend  
16 only those funds that are available in a municipal development fee  
17 trust fund for the provision of affordable housing in accordance  
18 with regulations of the council. A municipality shall not be  
19 required to raise or expend any other municipal revenues to meet  
20 allocations of affordable housing need as calculated by the council.

21     e. When a municipality's housing element includes the  
22 provision of rental housing units in a community residence for the  
23 developmentally disabled, as defined in section 2 of P.L.1977,  
24 c.448 (C.30:11B-2), which will be affordable to persons of low and  
25 moderate income, and for which adequate measures to retain such  
26 affordability pursuant to paragraph (3) of subsection a. of this  
27 section are included in the housing element, those housing units  
28 shall be fully credited as permitted under the rules of the council  
29 towards the fulfillment of the municipality's fair share of low and  
30 moderate income housing.

31     f. It having been determined by the Legislature that the  
32 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is  
33 a public purpose, a municipality or municipalities may utilize public  
34 monies to make donations, grants or loans of public funds for the  
35 rehabilitation of deficient housing units and the provision of new or  
36 substantially rehabilitated housing for low and moderate persons,  
37 providing that any private advantage is incidental.

38     g. A municipality which has received substantive certification  
39 from the council, and which has actually effected the construction  
40 of the affordable housing units it is obligated to provide, may  
41 amend its affordable housing element or zoning ordinances without  
42 the approval of the council.

43     h. Whenever affordable housing units are proposed to be  
44 provided through an inclusionary development, a municipality shall  
45 provide, through its zoning powers, incentives to the developer,  
46 which shall include increased densities and reduced costs, in  
47 accordance with the regulations of the council and this subsection.

1 i. The council, upon the application of a municipality and a  
2 developer, may approve reduced affordable housing set-asides or  
3 increased densities to ensure the economic feasibility of an  
4 inclusionary development.

5 j. (1) Notwithstanding any regulations of the council to the  
6 contrary, a municipality may provide for an occupancy preference  
7 for available affordable housing units for low or moderate income  
8 veterans who served in time of war or other emergency, as defined  
9 by Section 1 of P.L.1963, c.171 (C.54:4-8.10).

10 (2) The council shall adopt, pursuant to the "Administrative  
11 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
12 regulations necessary to effectuate this subsection.

13 (cf: P.L. 2008, c.46, s.15)

14  
15 8. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to  
16 read as follows:

17 12. a. **【Except as prohibited under P.L.2008, c.46 (C.52:27D-**  
18 **329.1 et al.), a】** A municipality may propose the transfer of up to  
19 50% of its fair share to another municipality within its housing  
20 region by means of a contractual agreement into which two  
21 municipalities voluntarily enter. A municipality may also propose a  
22 transfer by contracting with the agency or another governmental  
23 entity designated by the council if the council determines that the  
24 municipality has exhausted all possibilities within its housing  
25 region. A municipality proposing to transfer to another  
26 municipality, whether directly or by means of a contract with the  
27 agency or another governmental entity designated by the council,  
28 shall provide the council with the housing element and statement  
29 required under subsection c. of section 11 of P.L.1985, c.222  
30 (C.52:27D-311), and shall request the council to determine a match  
31 with a municipality filing a statement of intent pursuant to  
32 subsection e. of this section. Except as provided in subsection b. of  
33 this section, the agreement may be entered into upon obtaining  
34 substantive certification under section 14 of P.L.1985, c.222  
35 (C.52:27D-314), or anytime thereafter. The regional contribution  
36 agreement entered into shall specify how the housing shall be  
37 provided by the second municipality, hereinafter the receiving  
38 municipality, and the amount of contributions to be made by the  
39 first municipality, hereinafter the sending municipality.

40 b. A municipality which is a defendant in an exclusionary  
41 zoning suit and which has not obtained substantive certification  
42 pursuant to P.L.1985, c.222 may request the court to be permitted to  
43 fulfill a portion of its fair share by entering into a regional  
44 contribution agreement. If the court believes the request to be  
45 reasonable, the court shall request the council to review the  
46 proposed agreement and to determine a match with a receiving  
47 municipality or municipalities pursuant to this section. The court  
48 may establish time limitations for the council's review, and shall

1 retain jurisdiction over the matter during the period of council  
2 review. If the court determines that the agreement provides a  
3 realistic opportunity for the provision of low and moderate income  
4 housing within the housing region, it shall provide the sending  
5 municipality a credit against its fair share for housing to be  
6 provided through the agreement in the manner provided in this  
7 section. The agreement shall be entered into prior to the entry of a  
8 final judgment in the litigation. In cases in which a final judgment  
9 was entered prior to the date P.L.1985, c.222 takes effect and in  
10 which an appeal is pending, a municipality may request  
11 consideration of a regional contribution agreement; provided that it  
12 is entered into within 120 days after P.L.1985, c.222 takes effect.  
13 In a case in which a final judgment has been entered, the court shall  
14 consider whether or not the agreement constitutes an expeditious  
15 means of providing part of the fair share. Notwithstanding this  
16 subsection, no consideration shall be given to any regional  
17 contribution agreement of which the council did not complete its  
18 review and formally approve a recommendation to the court prior to  
19 the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.).

20 c. **【Except as prohibited under P.L.2008, c.46 (C.52:27D-329.1**  
21 **et al.), regional】** Regional contribution agreements shall be  
22 approved by the council, after review by the county planning board  
23 or agency of the county in which the receiving municipality is  
24 located. The council shall determine whether or not the agreement  
25 provides a realistic opportunity for the provision of low and  
26 moderate income housing within convenient access to employment  
27 opportunities. The council shall refer the agreement to the county  
28 planning board or agency which shall review whether or not the  
29 transfer agreement is in accordance with sound, comprehensive  
30 regional planning. In its review, the county planning board or  
31 agency shall consider the master plan and zoning ordinance of the  
32 sending and receiving municipalities, its own county master plan,  
33 and the State development and redevelopment plan. In the event  
34 that there is no county planning board or agency in the county in  
35 which the receiving municipality is located, the council shall also  
36 determine whether or not the agreement is in accordance with  
37 sound, comprehensive regional planning. After it has been  
38 determined that the agreement provides a realistic opportunity for  
39 low and moderate income housing within convenient access to  
40 employment opportunities, and that the agreement is consistent with  
41 sound, comprehensive regional planning, the council shall approve  
42 the regional contribution agreement by resolution. All  
43 determinations of a county planning board or agency shall be in  
44 writing and shall be made within such time limits as the council  
45 may prescribe, beyond which the council shall make those  
46 determinations and no fee shall be paid to the county planning  
47 board or agency pursuant to this subsection.

1       d. In approving a regional contribution agreement, the council  
2 shall set forth in its resolution a schedule of the contributions to be  
3 appropriated annually by the sending municipality. A copy of the  
4 adopted resolution shall be filed promptly with the Director of the  
5 Division of Local Government Services in the Department of  
6 Community Affairs, and the director shall thereafter not approve an  
7 annual budget of a sending municipality if it does not include  
8 appropriations necessary to meet the terms of the resolution.  
9 Amounts appropriated by a sending municipality for a regional  
10 contribution agreement pursuant to this section are exempt from the  
11 limitations or increases in final appropriations imposed under  
12 P.L.1976, c.68 (C.40A:4-45.1 et seq.).

13       e. The council shall maintain current lists of municipalities  
14 which have stated an intent to enter into regional contribution  
15 agreements as receiving municipalities, and shall establish  
16 procedures for filing statements of intent with the council. No  
17 receiving municipality shall be required to accept a greater number  
18 of low and moderate income units through an agreement than it has  
19 expressed a willingness to accept in its statement, but the number  
20 stated shall not be less than a reasonable minimum number of units,  
21 not to exceed 100, as established by the council. The council shall  
22 require a project plan from a receiving municipality prior to the  
23 entering into of the agreement, and shall submit the project plan to  
24 the agency for its review as to the feasibility of the plan prior to the  
25 council's approval of the agreement. The agency may recommend  
26 and the council may approve as part of the project plan a provision  
27 that the time limitations for contractual guarantees or resale controls  
28 for low and moderate income units included in the project shall be  
29 less than 30 years, if it is determined that modification is necessary  
30 to assure the economic viability of the project.

31       f. The council shall establish guidelines for the duration and  
32 amount of contributions in regional contribution agreements. In  
33 doing so, the council shall give substantial consideration to the  
34 average of: (1) the median amount required to rehabilitate a low and  
35 moderate income unit up to code enforcement standards; (2) the  
36 average internal subsidization required for a developer to provide a  
37 low income housing unit in an inclusionary development; (3) the  
38 average internal subsidization required for a developer to provide a  
39 moderate income housing unit in an inclusionary development.  
40 Contributions may be prorated in municipal appropriations  
41 occurring over a period not to exceed ten years and may include an  
42 amount agreed upon to compensate or partially compensate the  
43 receiving municipality for infrastructure or other costs generated to  
44 the receiving municipality by the development. Appropriations  
45 shall be made and paid directly to the receiving municipality or  
46 municipalities or to the agency or other governmental entity  
47 designated by the council, as the case may be.



1 g. The council shall require receiving municipalities to file  
2 annual reports with the agency setting forth the progress in  
3 implementing a project funded under a regional contribution  
4 agreement, and the agency shall provide the council with its  
5 evaluation of each report. The council shall take such actions as  
6 may be necessary to enforce a regional contribution agreement with  
7 respect to the timely implementation of the project by the receiving  
8 municipality.

9 [No consideration shall be given to any regional contribution  
10 agreement for which the council did not complete its review and  
11 grant approval prior to the effective date of P.L.2008, c.46  
12 (C.52:27D-329.1 et al.). On or after the effective date of P.L.2008,  
13 c.46 (C.52:27D-329.1 et al.), no regional contribution agreement  
14 shall be entered into by a municipality, or approved by the council  
15 or the court.]

16 (cf: P.L.2008, c.46, s.16)

17

18 9. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to  
19 read as follows:

20 20. There is established in the Department of Community  
21 Affairs a separate trust fund, to be used for the exclusive purposes  
22 as provided in this section, and which shall be known as the "New  
23 Jersey Affordable Housing Trust Fund." The fund shall be a non-  
24 lapsing, revolving trust fund, and all monies deposited or received  
25 for purposes of the fund shall be accounted for separately, by source  
26 and amount, and remain in the fund until appropriated for such  
27 purposes. The fund shall be the repository of all State funds  
28 appropriated for affordable housing purposes, including the  
29 proceeds from the receipts of the additional fee collected pursuant  
30 to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49  
31 (C.46:15-7), proceeds from available receipts of the Statewide non-  
32 residential development fees collected pursuant to section 35 of  
33 P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or reverting from  
34 municipal development trust funds, or other monies as may be  
35 dedicated, earmarked, or appropriated by the Legislature for the  
36 purposes of the fund. All references in any law, order, rule,  
37 regulation, contract, loan, document, or otherwise, to the  
38 "Neighborhood Preservation Nonlapsing Revolving Fund" shall  
39 mean the "New Jersey Affordable Housing Trust Fund." The  
40 department shall be permitted to utilize annually up to 7.5 percent  
41 of the monies available in the fund for the payment of any  
42 necessary administrative costs related to the administration of the  
43 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), the  
44 State Housing Commission, or any costs related to administration of  
45 P.L.2008, c.46 (C.52:27D-329.1 et al.).

46 a. Except as permitted pursuant to subsection g. of this section,  
47 the commissioner shall award grants or loans from this fund for  
48 housing projects and programs in municipalities whose housing

1 elements have received substantive certification from the council, in  
2 municipalities receiving State aid pursuant to P.L.1978, c.14  
3 (C.52:27D-178 et seq.), in municipalities subject to builder's  
4 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328)  
5 or in receiving municipalities in cases where the council has  
6 approved a regional contribution agreement and a project plan  
7 developed by the receiving municipality.

8 Of those monies deposited into the "New Jersey Affordable  
9 Housing Trust Fund" that are derived from municipal development  
10 fee trust funds, or from available collections of Statewide non-  
11 residential development fees, a priority for funding shall be  
12 established for projects in municipalities that have petitioned the  
13 council for substantive certification.

14 Programs and projects in any municipality shall be funded only  
15 after receipt by the commissioner of a written statement in support  
16 of the program or project from the municipal governing body.

17 b. The commissioner shall establish rules and regulations  
18 governing the qualifications of applicants, the application  
19 procedures, and the criteria for awarding grants and loans and the  
20 standards for establishing the amount, terms and conditions of each  
21 grant or loan.

22 c. For any period which the council may approve, the  
23 commissioner may assist affordable housing programs which are  
24 not located in municipalities whose housing elements have been  
25 granted substantive certification or which are not in furtherance of a  
26 regional contribution agreement; provided that the affordable  
27 housing program will meet all or part of a municipal low and  
28 moderate income housing obligation.

29 d. Amounts deposited in the "New Jersey Affordable Housing  
30 Trust Fund" shall be targeted to regions based on the region's  
31 percentage of the State's low and moderate income housing need as  
32 determined by the council. Amounts in the fund shall be applied for  
33 the following purposes in designated neighborhoods:

34 (1) Rehabilitation of substandard housing units occupied or to  
35 be occupied by low and moderate income households;

36 (2) Creation of accessory apartments to be occupied by low and  
37 moderate income households;

38 (3) Conversion of non-residential space to residential purposes;  
39 provided a substantial percentage of the resulting housing units are  
40 to be occupied by low and moderate income households;

41 (4) Acquisition of real property, including purchases that are  
42 part of a market to affordable program as described in P.L. , c. ,  
43 (C. ) (pending before the Legislature as this bill), demolition and  
44 removal of buildings, or construction of new housing that will be  
45 occupied by low and moderate income households, or any  
46 combination thereof;

47 (5) Grants of assistance to eligible municipalities for costs of  
48 necessary studies, surveys, plans and permits; engineering,

1 architectural and other technical services; costs of land acquisition  
2 and any buildings thereon; and costs of site preparation, demolition  
3 and infrastructure development for projects undertaken pursuant to  
4 an approved regional contribution agreement;

5 (6) Assistance to a local housing authority, nonprofit or limited  
6 dividend housing corporation or association or a qualified entity  
7 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for  
8 rehabilitation or restoration of housing units which it administers  
9 which: (a) are unusable or in a serious state of disrepair; (b) can be  
10 restored in an economically feasible and sound manner; and (c) can  
11 be retained in a safe, decent and sanitary manner, upon completion  
12 of rehabilitation or restoration; and

13 (7) Other housing programs for low and moderate income  
14 housing, including, without limitation, (a) infrastructure projects  
15 directly facilitating the construction of low and moderate income  
16 housing not to exceed a reasonable percentage of the construction  
17 costs of the low and moderate income housing to be provided and  
18 (b) alteration of dwelling units occupied or to be occupied by  
19 households of low or moderate income and the common areas of the  
20 premises in which they are located in order to make them accessible  
21 to handicapped persons.

22 e. Any grant or loan agreement entered into pursuant to this  
23 section shall incorporate contractual guarantees and procedures by  
24 which the division will ensure that any unit of housing provided for  
25 low and moderate income households shall continue to be occupied  
26 by low and moderate income households for at least 20 years  
27 following the award of the loan or grant, except that the division  
28 may approve a guarantee for a period of less than 20 years where  
29 necessary to ensure project feasibility.

30 f. Notwithstanding the provisions of any other law, rule or  
31 regulation to the contrary, in making grants or loans under this  
32 section, the department shall not require that tenants be certified as  
33 low or moderate income or that contractual guarantees or deed  
34 restrictions be in place to ensure continued low and moderate  
35 income occupancy as a condition of providing housing assistance  
36 from any program administered by the department, when that  
37 assistance is provided for a project of moderate rehabilitation if the  
38 project (1) contains 30 or fewer rental units and (2) is located in a  
39 census tract in which the median household income is 60 percent or  
40 less of the median income for the housing region in which the  
41 census tract is located, as determined for a three person household  
42 by the council in accordance with the latest federal decennial  
43 census. A list of eligible census tracts shall be maintained by the  
44 department and shall be adjusted upon publication of median  
45 income figures by census tract after each federal decennial census.

46 g. In addition to other grants or loans awarded pursuant to this  
47 section, and without regard to any limitations on such grants or  
48 loans for any other purposes herein imposed, the commissioner

1 shall annually allocate such amounts as may be necessary in the  
2 commissioner's discretion, and in accordance with section 3 of  
3 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants  
4 under the program created pursuant to P.L.2004, c.140 (C.52:27D-  
5 287.1 et al.). Such rental assistance grants shall be deemed  
6 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-  
7 301 et al.), in order to meet the housing needs of certain low income  
8 households who may not be eligible to occupy other housing  
9 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

10 h. The department and the State Treasurer shall submit the  
11 "New Jersey Affordable Housing Trust Fund" for an audit annually  
12 by the State Auditor or State Comptroller, at the discretion of the  
13 Treasurer. In addition, the department shall prepare an annual  
14 report for each fiscal year, and submit it by November 30th of each  
15 year to the Governor and the Legislature, and the Joint Committee  
16 on Housing Affordability, or its successor, and post the information  
17 to its web site, of all activity of the fund, including details of the  
18 grants and loans by number of units, number and income ranges of  
19 recipients of grants or loans, location of the housing renovated or  
20 constructed using monies from the fund, the number of units upon  
21 which affordability controls were placed, and the length of those  
22 controls. The report also shall include details pertaining to those  
23 monies allocated from the fund for use by the State rental assistance  
24 program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3)  
25 and subsection g. of this section. In the event the department fails  
26 to issue the annual report, as required by this subsection, the penalty  
27 provisions of R.S.52:14-18 shall apply.

28 i. The commissioner shall submit to the Legislature a copy of  
29 any grant or loan awarded from the "New Jersey Affordable  
30 Housing Trust Fund." If the Legislature does not disapprove the  
31 grant or loan by the adoption of a concurrent resolution within 60  
32 days of the submission to the Legislature of the notice of the award,  
33 the grant shall be deemed authorized.

34 (cf: P.L.2008, c.46, s.17)

35  
36 10. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to  
37 read as follows:

38 8. a. The council may authorize a municipality that has  
39 petitioned for substantive certification, or that has been so  
40 authorized by a court of competent jurisdiction, and which has  
41 adopted a municipal development fee ordinance to impose and  
42 collect development fees from developers of residential property, in  
43 accordance with rules promulgated by the council. Each amount  
44 collected shall be deposited and shall be accounted for separately,  
45 by payer and date of deposit.

46 A municipality may not spend or commit to spend any affordable  
47 housing development fees, including Statewide non-residential fees  
48 collected and deposited into the municipal affordable housing trust

1 fund, without first obtaining the council's approval of the  
2 expenditure. The council shall promulgate regulations regarding  
3 the establishment, administration and enforcement of the  
4 expenditure of affordable housing development fees by  
5 municipalities. The council shall have exclusive jurisdiction  
6 regarding the enforcement of these regulations, provided that any  
7 municipality which is not in compliance with the regulations  
8 adopted by the council may be subject to forfeiture of any or all  
9 funds remaining within its municipal trust fund. Any funds so  
10 forfeited shall be deposited into the "New Jersey Affordable  
11 Housing Trust Fund" established pursuant to section 20 of  
12 P.L.1985, c.222 (C.52:27D-320).

13 b. A municipality shall deposit all fees collected, whether or  
14 not such collections were derived from fees imposed upon non-  
15 residential or residential construction into a trust fund dedicated to  
16 those purposes as required under this section, and such additional  
17 purposes as may be approved by the council.

18 c. (1) A municipality may only spend development fees for an  
19 activity approved by the council to address the municipal fair share  
20 obligation.

21 (2) Municipal development trust funds shall not be expended to  
22 reimburse municipalities for activities which occurred prior to the  
23 authorization of a municipality to collect development fees.

24 (3) A municipality shall set aside a portion of its development  
25 fee trust fund for the purpose of providing affordability assistance  
26 to low and moderate income households in affordable units  
27 included in a municipal fair share plan, in accordance with rules of  
28 the council.

29 (a) Affordability assistance programs may include down  
30 payment assistance, security deposit assistance, low interest loans,  
31 common maintenance expenses for units located in condominiums,  
32 rental assistance, including a municipal rental voucher program, and  
33 any other program authorized by the council.

34 (b) Affordability assistance to households earning 30 percent or  
35 less of median income may include buying down the cost of low  
36 income units in a municipal fair share plan to make them affordable  
37 to households earning 30 percent or less of median income. The use  
38 of development fees in this manner shall not entitle a municipality  
39 to bonus credits except as may be provided by the rules of the  
40 council.

41 (4) A municipality may contract with a private or public entity  
42 to administer any part of its housing element and fair share plan,  
43 including the requirement for affordability assistance, or any  
44 program or activity for which the municipality expends  
45 development fee proceeds, in accordance with rules of the council.

46 (5) Not more than 20 percent of the revenues collected from  
47 development fees shall be expended on administration, in  
48 accordance with rules of the council.

1 d. The council shall establish a time by which all development  
2 fees collected within a calendar year shall be expended; provided,  
3 however, that all fees shall be committed for expenditure within  
4 four years from the date of collection. A municipality that fails to  
5 commit to expend the balance required in the development fee trust  
6 fund by the time set forth in this section shall be required by the  
7 council to transfer the remaining unspent balance at the end of the  
8 four-year period to the "New Jersey Affordable Housing Trust  
9 Fund," established pursuant to section 20 of P.L.1985, c.222  
10 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et  
11 al.), to be used in the housing region of the transferring  
12 municipality for the authorized purposes of that fund.

13 e. Notwithstanding any provision of this section, or regulations  
14 of the council, a municipality shall not collect a development fee  
15 from a developer whenever that developer is providing for the  
16 construction of affordable units, either on-site or elsewhere within  
17 the municipality.

18 f. Notwithstanding any provision of this section, or regulations  
19 of the council, a municipality shall not collect a development fee for  
20 any construction or reconstruction of an owner-occupied one- or  
21 two-family residential property. For purposes of this subsection,  
22 "owner-occupied" refers to premises owned by a natural person that  
23 are occupied, or are to be occupied, by that person or a member of  
24 that person's immediate family, as a primary residence.

25 This section shall not apply to the collection of a Statewide  
26 development fee imposed upon non-residential development  
27 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
28 et seq.) by the State Treasurer, when such collection is not  
29 authorized to be retained by a municipality.

30 (cf: P.L.2008, c.46, s.8)

31

32 11. Section 9 of P.L.2008, c.46 (C.52:27D-329.3) is amended to  
33 read as follows

34 9. a. The council may authorize a municipality that has  
35 petitioned for substantive certification to impose and collect  
36 payments-in-lieu of constructing affordable units on site upon the  
37 construction of residential development, which payments may be  
38 imposed and collected as provided pursuant to the rules of the  
39 council. Payment-in-lieu fees shall be deposited into a trust fund,  
40 and accounted for separately from any other fees collected by a  
41 municipality. Whenever a payment-in-lieu is charged by a  
42 municipality pursuant to this subsection, a development fee  
43 authorized pursuant to section 8 of P.L.2008, c.46 (C.52:27D-  
44 329.2) shall not be charged in connection with the same  
45 development.

46 b. A municipality shall commit to expend collections from  
47 payments-in-lieu imposed pursuant to subsection a. of this section  
48 within four years of the date of collection. The council may extend

1 this deadline if the municipality submits sufficient proof of building  
2 or other permits, or other efforts concerning land acquisition or  
3 project development. The council shall provide such administrative  
4 assistance as may be required to aid in the construction of  
5 affordable housing units. A municipality that fails to commit to  
6 expend the amounts collected pursuant to this section within the  
7 timeframes established shall be required to transfer any unexpended  
8 revenue collected pursuant to subsection a. of this section to the  
9 "New Jersey Affordable Housing Trust Fund," established pursuant  
10 to section 20 of P.L.1985, c.222 (C.52:27D-320), to be used within  
11 the same housing region for the authorized purposes of that fund, in  
12 accordance with regulations promulgated by the council.

13 c. Notwithstanding any provision of this section, or regulations  
14 of the council, a municipality shall not collect any payment-in-lieu  
15 fee for any construction or reconstruction of an owner-occupied  
16 one- or two-family residential property. For purposes of this  
17 subsection, "owner-occupied" refers to premises owned by a natural  
18 person that are occupied, or are to be occupied, by that person or a  
19 member of that person's immediate family, as a primary residence.  
20 (cf: PL.2008, c.46, s.9)

21  
22 12. (New section) a. A market to affordable program shall  
23 include units purchased or subsidized through a written agreement  
24 with the property owner and sold or rented to low- and moderate-  
25 income households. Subject to the provisions of subsection b. of  
26 this section, market to affordable programs may be designed to  
27 produce only low-income units, only moderate-income units or both  
28 low- and moderate-income units.

29 b. A municipality may address any portion, including the  
30 entirety, of its fair share obligation with units acquired as part of a  
31 market to affordable program. The council shall credit each unit  
32 acquired, paid down, and offered as affordable against the fair share  
33 obligation of a municipality.

34 c. The following provisions shall apply to market to affordable  
35 programs:

36 (1) At the time they are offered for sale or rental, eligible units  
37 may be new, pre-owned or vacant.

38 (2) The units shall be certified to be in sound condition as a  
39 result of an inspection performed by a licensed building inspector.

40 (3) A municipality may address its fair share obligation using  
41 for-sale or rental units acquired as part of a market to affordable  
42 program.

43  
44 13. (New section) Notwithstanding any other provision of  
45 P.L.1985, c.222 (C.52:27D-301 et al.) or any supplements thereto, a  
46 municipality authorized to collect development fees pursuant to  
47 P.L. 1985, c.222 (C.52:27D-301 et al.) or P.L.2008, c.46  
48 (C.52:27D-329.1 et al.) may allocate up to 25% of the fees collected

1 annually towards moderate-income housing for persons working in  
2 the municipality, or within a 10 mile radius of the municipality. For  
3 the purpose of this section, the maximum income limitations of the  
4 Council on Affordable Housing for moderate income households  
5 shall be extended to 120% of the regional median income  
6 limitations as established by the council.

7  
8 14. (New section) a. A developer who was subject to the  
9 payment of a nonresidential development fee pursuant to Section 35  
10 of P.L.2008, c.46 (C.40:55D-8.4) prior to the enactment of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill)  
12 shall be entitled to a return of any moneys paid.

13 b. If moneys are required to be returned under subsection a. of  
14 this section, a claim shall be submitted, in writing, to the same  
15 entity to which the moneys were paid, within 120 days of the  
16 effective date of P.L. , c. (C. ) (pending before the  
17 Legislature as this bill). The entity to whom the funds were paid  
18 shall promptly review all requests for returns, and the fees paid  
19 shall be returned to the claimant within 30 days of receipt of the  
20 claim for return.

21  
22 15. The following sections are repealed:

23 Section 32 of P.L.2008, c.46 (C.40:55D-8.1);  
24 Section 33 of P.L.2008, c.46 (C.40:55D-8.2);  
25 Section 34 of P.L.2008, c.46 (C.40:55D-8.3);  
26 Section 35 of P.L.2008, c.46 (C.40:55D-8.4);  
27 Section 36 of P.L.2008, c.46 (C.40:55D-8.5);  
28 Section 37 of P.L.2008, c.46 (C.40:55D-8.6);  
29 Section 38 of P.L.2008, c.46 (C.40:55D-8.7);  
30 Section 12 of P.L.2008, c.46 (C.52:27D-329.6); and  
31 Section 14 of P.L.2008, c.46 (C.52:27D-329.8).

32  
33 16. This act shall take effect immediately.

#### 34 35 36 STATEMENT

37  
38 This bill revises the laws concerning the provision of affordable  
39 housing. This legislation amends the "Fair Housing Act," P.L.  
40 1985, c.222 (C.52:27D-301 et al.) as well P.L.2008, c.46, which  
41 was recently enacted.

42 The bill would reestablish the regional contribution agreement as  
43 a viable method for a municipality to assist in affordable housing  
44 construction. The bill repeals the recently enacted Statewide non-  
45 residential development fee and requires refunds of moneys paid.  
46 The bill also eliminates the growth share approach of the Council  
47 on Affordable Housing as applied to commercial and industrial



1 development. Requiring a set-aside for affordable housing as part  
2 of residential development is authorized under the bill.

3 The bill permits municipalities to meet affordable housing  
4 obligations through local rental voucher programs, and would  
5 permit occupancy preference for veterans in all affordable housing  
6 units. All subsidized housing produced through State or federal  
7 funds would be required to be credited against the fair share  
8 housing obligation. The bill extends the time for filing a petition  
9 with COAH to December 1, 2009, or 365 days after the enactment  
10 of the bill, whichever is later.

11 The bill permits municipalities to conduct their own exterior  
12 housing survey concerning units in need of rehabilitation, and  
13 permits the survey count, as well as the municipal determination of  
14 present and prospective need, to be presumptively dispositive for  
15 the calculation required under the Fair Housing Act. This directly  
16 addresses the court's misinterpretation of current law in a recent  
17 Appellate Division case, in which the court questioned the wisdom  
18 of permitting municipal determination of need, stating that this  
19 provision would allow municipalities the choice to "just not grow."  
20 To the contrary, municipalities must permit growth under the  
21 "Municipal Land Use Law," as they are forbidden to place  
22 moratoriums on development, except for limited time periods when  
23 public health is an issue. The bill also defines "growth" under the  
24 Fair Housing Act as the number of units of actual new residential  
25 construction not reserved for occupancy by low and moderate  
26 income households located on previously vacant land within a  
27 municipality.

28 The bill requires that, prior to funding of projects from the "New  
29 Jersey Affordable Housing Trust Fund," the Legislature must be  
30 given the option of disapproving them. The bill requires the Trust  
31 Fund to produce an annual report and imposes penalties if the report  
32 is not provided.

33 This legislation also provides that, when municipalities are  
34 granted a vacant land adjustment, densities in remaining parcels  
35 shall not increased for purposes of calculating the municipalities'  
36 prospective fair share housing obligation.

37 The bill eliminates the cap on existing housing units that may  
38 used to satisfy the fair share obligation, thus opening the possibility  
39 of foreclosed-upon housing units being available to satisfy the  
40 housing need. The bill prohibits a municipality from charging a  
41 development fee or in lieu of building fee from a person building or  
42 rebuilding a single- or two-family home in which they or a family  
43 member will reside and use as a primary residence from being  
44 charged a development fee or an in lieu of building fee under the  
45 Fair Housing Act. These units are also excluded from the definition  
46 of growth.